

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

NICHOLAS A. DAVIS,)	
)	
Plaintiff,)	
vs.)	NO. CIV-08-0550-HE
)	
OKLAHOMA COUNTY, ET AL.,)	
)	
Defendants.)	

ORDER

Plaintiff Nicholas A. Davis, a state prisoner appearing *pro se* and *in forma pauperis* instituted this action under 42 U.S.C. § 1983, alleging violations of his constitutional rights. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert E. Bacharach. He has recommended, with respect to the plaintiff's claims against defendant Joe Hatherly in his official capacity, that some be dismissed and summary judgment entered in the defendant's favor on the others.


The parties failed to object to the magistrate judge's Report and Recommendation and thereby waived their right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1. Accordingly, the court adopts Magistrate Judge Bacharach's Report and Recommendation and grants defendant Hatherly's motion [Doc. #44]¹ as follows. The plaintiff's claims against defendant Hatherly in his official capacity

¹The magistrate judge treated the motion as "one for dismissal for failure to state a claim or, in the alternative, for summary judgment." Davis v. Oklahoma County, No. 08-550-HE (W.D.Okla. July 16, 2009) (order treating motion to dismiss as one for summary judgment pursuant to Fed.R.Civ.P.12(d); Doc. #48.

that relate to the September 24, 2006, assault are dismissed with prejudice. Summary judgment is granted in defendant Hatherly's favor on the plaintiff's claims against him in his official capacity based on deliberate indifference to medical needs.

IT IS SO ORDERED.

Dated this 19th day of November, 2009.



JOE HEATON
UNITED STATES DISTRICT JUDGE